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State of New Jersey

DEPARTMENT OF CORRECTIONS

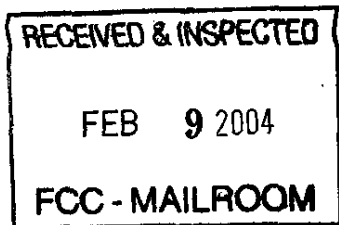
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JAMES E. MCGREVEY
Governor

DEVON BROWN
Commissioner



February 6, 2004

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Suite TW-A325
Washington, DC 20554

RE: Docket 96-128

Dear Ms. Dortch:

I am writing to provide comment regarding the FCC petition filed by certain inmates and their families related to Inmate Calling Services (ICS). In the *Wright Petition for Rulemaking* (CC Docket 96-128) ("*Wright Petition*"), petitioners have asked the FCC to prohibit commissions beyond legitimate costs incurred by prison administrators in providing ICS, prohibit collect call-only restrictions at privately-administered prisons, and require those correctional facilities to permit multiple long distance carriers to interconnect with prison telephone systems.

While this petition is not directed at state government operated correctional facilities, I wish to express my concerns to make clear that the proposals contained therein, while not applicable or appropriate in my view for privately operated correctional facilities, are similarly inappropriate for imposition on states in the management of their correctional facilities.

The *Wright Petition* includes several proposals that should not be adopted by the FCC for the following reasons:

Commissions Replaced by Tariffed Access Charges

- The petitioners' request that the FCC eliminate commissions except to reimburse the correctional authorities for actual expenses incurred in providing ICS represents an interference in the important state interests involved. State legislatures and Executive Branch agencies should retain their prerogatives in determining the structure of ICS services, rates, commissions and the uses of those funds.

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List A B C D E

- The petitioners' estimates of the costs to be used as a basis for an FCC established tariffed rate do not take into account the great variance in the expenses associated with telephone systems in a wide range of environments in corrections. The FCC should not substitute its judgment for the judgment of states as to how best to efficiently provide ICS within their jurisdictions, oversight over which their duly elected and appointed officials have vested authority and exercise state prerogative.
- The petitioners fail to take into account costs specific to various state jurisdictions associated with monitoring phone calls, security costs in effecting calls for inmates who do not have direct access to phones, physical plant costs for the placement of the equipment and other security related expenses in corrections. These costs vary widely from state to state, and institution to institution.

FCC Ban on Exclusive Agreements for ICS

- Petitioners' consultant claims - that prison facilities could, within a year, redesign and rebuild their current ICS networks so that one underlying carrier would provide the hardware (switch and software, management control system, phones, and other necessary components) while multiple competitive long distance providers would interconnect at the switch - should not be adopted in any form by the FCC because:
 - this does not take into consideration the circumstances specific to each state jurisdiction;
 - no assurance exists that service providers would be willing or able to provide the hardware, software, and other components of the underlying "local" prison telephone system within their jurisdictions if revenues were capped at seven cents a minute access charges from long distance providers;
 - a mandated method of service delivery represents an unwarranted constraint on states' ability to meet the special security concerns of their prison facilities;
 - consultant claims as to the cost associated with complete reconstruction of ICS networks in prisons throughout the country does not take into account the individual differences in and among state correctional systems and facilities.
 - Multiple competitive long distance carriers increase the risk of a breach in security that could allow an inappropriate call to be made to a victim, witness, or accomplice. The single vendor format ensures that the line is identified as inmate service and cannot be rerouted or inadvertently processed to a live operator or unauthorized number.

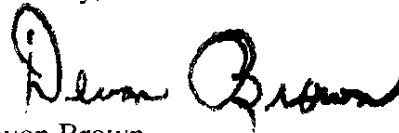
FCC Ban on Collect-Calling-Only Environments:

- In New Jersey corrections, collect calling is the only feasible means of providing inmate phone service. It is the only technology approach that allows the level of security needed to ensure that inmates are not conducting illegal businesses, are not able to bypass blocked numbers, are not making harassing calls, and are not using the telephone for purposes other than legitimate interpersonal contact. New Jersey authorities have long experienced these situations in state correctional facilities, and they cannot be tolerated on an ongoing basis. Collect calling allows the called party to accept or deny the call with the full knowledge that the caller is an inmate incarcerated at a New Jersey correctional facility.

For the above noted reasons, the FCC should refrain from changing its previous decision that inmate services constitute "an exceptional set of circumstances" that do not fit under the general rules for pay phone services (*Report and Order*, 6 FCC Rcd 2744, 2752 (1991)).

I hope that these observations from the vantage point of a state authority will assist the FCC in understanding more clearly the factual and practical errors on which the *Wright Petition* is based.

Sincerely,

A handwritten signature in black ink, appearing to read "Devon Brown", written in a cursive style.

Devon Brown
Commissioner

DB:PTR:km

c: John E. McCormac, State Treasurer